

# **EXHIBIT C**

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Laura Hinojosa  
District Clerk  
Hidalgo District

CAUSE NO. C-3746-10-G

FRONTLINE HEALTH SERVICES, INC.	§	IN THE DISTRICT COURT
D/B/A FIRST CHOICE HEALTHCARE,	§	
FIRST CHOICE HEALTHCARE DEFINED	§	
BENEFIT PLAN, MARCIAL ZAMORA,	§	
M.D. AND JOE LUIS FLORES	§	
<i>Plaintiffs</i>	§	
VS.	§	<u>370<sup>th</sup></u> JUDICIAL DISTRICT
	§	
ROLAND CUELLAR, CUELLAR AND	§	
ASSOCIATES, L.L.C., PLANTO ROE	§	
FINANCIAL SERVICES, INC., BERKSHIRE	§	
RETIREMENT SERVICES, INC. AND	§	
BERKSHIRE EQUITY SALES, INC.	§	
<i>Defendants</i>	§	HIDALGO COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME FRONTLINE HEALTH SERVICES, INC. D/B/A FIRST CHOICE HEALTHCARE, FIRST CHOICE HEALTHCARE DEFINED BENEFIT PLAN, MARCIAL ZAMORA, M.D. AND JOE LUIS FLORES, Plaintiffs in the above-styled and numbered cause, and file this their Original Petition complaining of the Defendants, ROLAND CUELLAR, CUELLAR AND ASSOCIATES, L.L.C., PLANTO ROE FINANCIAL SERVICES, INC., BERKSHIRE RETIREMENT SERVICES, INC. AND BERKSHIRE EQUITY SALES, INC. (collectively referred to as "Defendants"), and for cause of action would show:

**I.**

**DISCOVERY CONTROL PLAN**

- 1.1. Discovery is intended to be conducted under Level 2 of Texas Rules of Civil Procedure 190 until such time as a docket control order is entered by the Court.

## II.

### PARTIES

- 2.1. Plaintiffs have their principal place of business in, or are residents of, Hidalgo County, Texas.
- 2.2. Defendant Rolando Cuellar is an individual residing in Bexar County, Texas. He may be served with process in person at 11550 I-10, Suite 150, San Antonio, Texas 78230.
- 2.3. Defendant Cuellar and Associates, L.L.C. is a limited liability company organized under the laws of the State of Texas with its principal place of business in Bexar County, Texas. It may be served with process by serving its registered agent, Roland Cuellar at 1150 IH 10 West, #150, San Antonio, Texas 78230.
- 2.4. Defendant Planto Roe Financial Services, Inc. is a corporation organized under the laws of the State of Texas with its principal place of business in Bexar County, Texas. It may served with process by serving its registered agent, Charles "Gene" E. Roe at 19230 Stonehue, Suite 4200, San Antonio, Texas 78558.
- 2.5. Defendant Berkshire Retirement Services, Inc. is a foreign corporation organized under the laws of the State of Massachusetts that does business within the State of Texas. It may served with process by serving its president, Robert C. Herklots at 700 South Street, Pittsfield, Massachusetts 01201.
- 2.6. Defendant Berkshire Equity Sales, Inc. is a foreign corporation organized under the laws of the State of Massachusetts that does business within the State of Texas. It may served with process by serving its president, Robert C. Herklots at 700 South Street, Pittsfield, Massachusetts 01201.

III.

VENUE

- 3.1. Venue is proper in Hidalgo County, Texas pursuant to Section 15.002(a)(1) because it is the county where all or a substantial part of the events or omissions giving rise to the claim occurred.

IV.

FACTS

- 4.1. Plaintiffs operate a home health agency in Hidalgo County, Texas. Defendant Roland Cuellar provided professional advice to Plaintiffs in connection with the establishment of a retirement plan for their several employees, which they called the First Choice Healthcare Defined Benefit Plan (hereinafter the "Plan"). Plaintiffs trusted Defendant Rolando Cuellar to provide them with an employee retirement plan that was suitable to their needs and financial condition. Instead, Defendant Rolando Cuellar recommended and established an employee retirement plan that was not suitable to Plaintiffs' needs and compatible with their financial condition causing Plaintiffs to suffer significant damages in order to comply with the financial obligations of the Plan.

V.

NEGLIGENCE

- 5.1. Defendant Rolando Cuellar owed a legal duty to Plaintiffs to ensure that they understood how the Plan worked, the financial commitment required by the Plan and what alternative, less expensive employee retirement plans were available to Plaintiffs. He was legally obligated to act with reasonable care, skill, and diligence in providing

advice on the appropriate employee retirement plan for Plaintiffs. Defendant Rolando Cuellar is therefore directly liable for negligence to Plaintiffs. The remaining Defendants owed Plaintiffs the duty to supervise Defendant Rolando Cuellar's conduct and are directly liable to Plaintiffs for negligent hiring, supervision and retention. These other Defendants are also vicariously liable for the loss caused to Plaintiffs by Defendant Rolando Cuellar's conduct as he was their employee and/or their actual, apparent or ostensible agent.

- 5.2. Defendants breached their respective legal duties of care, proximately causing Plaintiffs to suffer damages.

## **VI.**

### **DAMAGES**

- 6.1. The damages to Plaintiffs caused by all of the Defendants' actions are within the jurisdictional limits of this Court and Plaintiffs seek all those actual damages recognized under Texas law. Plaintiffs are also entitled to recover exemplary or punitive damages and plead exemplary damages under Chapter 41 of the Texas Civil Practice & Remedies Code.

## **VII.**

### **JURY DEMAND**

Plaintiffs demand a jury trial and have tendered the appropriate fee.

### **PRAYER**

For these reasons, Plaintiffs ask that the Defendants be cited to appear and answer, and that Plaintiffs have judgment against the Defendants, jointly and severally, for:

- a. Actual damages within the jurisdictional limits of the Court;

- b. Exemplary and punitive damages;
- c. Pre-judgment and post-judgment interest as allowed by law;
- d. Costs of suit; and
- e. All other relief, in law or equity, to which Plaintiffs may be entitled.

Respectfully submitted,

**GARCIA & MARTINEZ, L.L.P.**

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